Supreme Court, U.S.
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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

JOSEPH RICHARD REDNER,

Petitioner,

v.

THE CITY OF TAMPA, FLORIDA,
a Florida Municipal Corporation, and
PAM IORIO, in her official capacity as
Supervisor of Elections,
Hillsborough County, Florida

Respondents.

PETITION FOR WRIT OF CERTIORARI

LUKE CHARLES LIROT
LUKE CHARLES LIROT, P.A.
112 East Street, Ste. B
Tampa, FL 33602
(813) 221-9533
(813) 221-9175 FAX
Counsel for Petitioner

46pp

QUESTION PRESENTED

I. Whether a municipality can impose arbitrary and preclusive requirements, that serve no legitimate governmental interest, as a prerequisite for qualification as a candidate for public office.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner is JOSEPH RICHARD REDNER. The Respondents are THE CITY OF TAMPA, FLORIDA, a Florida Municipal Corporation, and PAM IORIO, in her official capacity as Supervisor of Elections, Hillsborough County, Florida.

Neither party has any parent or subsidiary corporation as contemplated by Rule 29.1.

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Hillsborough County, Florida
Respondents.

On Petition for a Writ of Certiorari to the
District Court of Appeal
of Florida, Second District

Joseph Richard Redner, an individual, respectfully petitions this Court for a writ of certiorari to review the judgment of the District Court of Appeal of Florida, Second District.

OPINIONS BELOW

The opinions of the Court of Appeal will be reported as a table opinion at 657 So.2d 1172 (Fla. 2d DCA 1995) and at 696 So. 2d 361 (Fla. 2d DCA 1997). Rehearing was denied on June 24, 1997. The opinions of the Circuit Court (App. A & D) are unreported.

JURISDICTION

The Court of Appeal entered its judgment on May 9, 1997. Rehearing was sought and was denied on June 24, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. Under Florida law, a *per curiam* affirmation, without opinion, is not subject to review by the Supreme Court of Florida (Constitution of the State of Florida, Article V, § 3).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV

The Fourteenth Amendment provides in pertinent part: "... nor shall any State deprive any person of life, liberty, or property, without due process of law, ..."

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983

42 U.S.C. § 1983 provides in pertinent part: "Every person who, under color of state law ... subjects, or causes to be subjected, any citizen ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, ..." 42 U.S.C. § 1983.

ORDINANCE PROVISIONS INVOLVED

City of Tampa Ordinance 8148-A

Tampa City Charter Section 2.02

"Each member of the city council shall have been a resident and elector of the city for one year immediately preceding the commencement of the term of office for which elected and shall continue to be a resident and elector of the city during the term of office. Additionally, the members of the city council representing districts 4 through 7 shall have been residents of the respective districts from which elected for six months immediately preceding the commencement of the term of office, and each shall continue to be a resident of the district from which elected during the term of office. No person who has, or but for resignation would have, served as a member of the city council for two consecutive, full terms shall be elected as a council member for the succeeding term; except that a person who has represented districts 1, 2, or 3 may run as a candidate for city council in district 4, 5, 6, or 7 if he meets the residency qualifications, and may, if elected, assume a seat on the city council immediately following his two consecutive, full terms; and except that a person who has served as a city council member representing either district 4, 5, 6, or 7 may run as a candidate to represent district 1, 2, or 3 and may, if elected, assume a seat on city council immediately following his two consecutive, full terms representing district 4, 5, 6 or 7. (Ord. No. 8148-A, §2, 1-6-8.3)"

STATEMENT OF THE CASE

This action is predicated on a state court's rejection of an action for declaratory and injunctive relief challenging *one* requirement of *two* deemed necessary to qualify as a candidate for the City of Tampa, Florida's, City Council. The trial court granted a Motion to Dismiss which was based on a prior ruling by the Florida Appellate Court which *per curiam* affirmed a non-final order denying REDNER'S Motion for Temporary Injunction, sought to enjoin PAM IORIO, in her official capacity as Supervisor of Elections for Hillsborough County, from applying the CITY OF TAMPA City Charter Section 2.02 (requiring candidates for the Tampa City Council to have been residents *and* "electors" for one year) as the basis for denial to REDNER of access to the ballot as a candidate for the Tampa City Council because he had not been a registered voter for one year prior to the date of taking office. The Order denying injunctive relief was entered on January 20, 1995. In an interlocutory appeal of the denial of injunctive relief, the jurisdiction of the Florida Appellate Court was invoked pursuant to Rule 9.130(a)(3)(b), Florida Rules of Appellate Procedure, which permitted the Appellate Court to review non-final orders which "grant, continue, modify, deny, or dissolve injunctions" as well as those which "refuse to modify or dissolve injunctions."

The first appeal, *Joseph Richard Redner v. The City of Tampa, et al., and Pam Iorio et al.,* Case No.: 95-00230 resulted in a *per curiam* affirmance on May 12, 1995. (Appendix "B"). A Motion for Rehearing and Rehearing En Banc was filed on May 27, 1995 which was denied by Order of this Court on June 26, 1995. (Appendix "C").

Subsequent to the issuance of the Mandate of the Appellate Court, the matter was resumed before the trial court. The City filed a Motion to Dismiss.

A hearing on the City's Motion was held on May 2, 1996, before the Honorable Sam D. Pendino. The City's Motion to

Dismiss was based on a variety of legal theories, including the City's position that REDNER was foreclosed from pursuing any relief from the trial court because of this Court's *per curiam* affirmance and the "law of the case" doctrine. The Motion to Dismiss was alternatively based on the jurisdictional argument alleging that the circuit court lacked jurisdiction to render a declaratory judgment under the declaratory judgment act, in that the dispute between the parties had already been resolved. The final basis upon which the City's motion was predicated was that, since the election for which Mr. REDNER had sought to be included on the ballot had longed since been concluded, the issue was moot and the Court was precluded from ruling on same. None of these arguments went to the merits of REDNER'S most important issue. Briefly stated, that issue was whether the additional requirement that a person be an "elector" for one year served any legitimate purpose over and above the requirement that a person be a "resident" for one year in order to qualify as a City Council candidate.

After vigorous oral argument in which REDNER sought to clarify the distinction between the Florida Appellate Court's standard of review for interlocutory appeals dealing with a trial court's determination regarding injunctive relief and the standard of review for final orders not seeking extraordinary remedies, REDNER attempted to assail the City's position, since the "reasonableness" of the additional "elector" requirement had never been established by any evidence whatsoever. The application of the "law of the case" doctrine, and the concept of "mootness" in the context of important civil rights issues in situations where the repetition of irreparable harm was virtually a certainty, were shown by REDNER to be inapplicable, however, the trial court granted the City's Motion to Dismiss.

The second appeal was brought pursuant to Rule 9.030 of the Florida Rules of Appellate Procedure, which allows for the appeal of final orders, such as the granting of the Motion to Dismiss. The purpose of the second appeal was to seek review of

the granting of the City's Motion to Dismiss and have the case remanded to the trial court for an evidentiary hearing at which the CITY could offer evidence, if any existed, as to why, a candidate for public office had to be both a "resident" for one year prior to the election and an "elector" for one year prior to the election. The underlying facts remain the same, however, the distinctions which REDNER sought to bring to the attention of the trial court in the effort to establish a fundamental evaluation of the "reasonability" of what has been referred to in the instant case as the one year "elector" requirement never occurred.

The facts established before the trial court were that REDNER, is and has been a resident of the City of Tampa for the past forty-seven (47) years, having lived within the City of Tampa since he was eight (8) years old. On or before 1986, REDNER and his family moved to 1310 Alicia Avenue, Tampa, Florida 33604. This location is within the area denominated as District 6 for the purposes of selecting candidates and members of the Tampa City Council.

In March of 1984, REDNER was convicted of possession of cocaine and possession of paraphernalia on the basis of a voluntary guilty plea to the charges. As the basis of the felony conviction, REDNER lost his civil rights, including the rights to serve on a jury, to vote, and to run for political office. Prior to 1994, REDNER had made several attempts to regain his civil rights and obtain the right to vote, including federal litigation and applications for clemency made to the Florida Board of Executive Clemency. On December 14, 1994, upon the showing that REDNER had fully rehabilitated himself and indeed had established himself as a productive member of society through the operation of several successful business endeavors, philanthropic and charitable activities, and active political efforts (despite his inability to run for public office), REDNER received the restoration of his civil rights from the Board of Executive Clemency, such Board being made up of the Governor of the State of Florida and the Florida Cabinet. An Executive Order indicating

such restoration was signed and executed on December 14, 1994. A copy of this Executive Order was attached to the Complaint filed in the lower court. It is reproduced herein as Appendix "G".

On December 19, 1994, REDNER, registered to vote and received a voter registration I.D., Number 1309751-2, Precinct 6. On several occasions, REDNER announced his interest in running for elected office, both prior to and subsequent to the restoration of his civil rights. After receiving warm support from several citizens, REDNER felt he should follow the call to public service. On January 10, 1995, REDNER filed with the Supervisor of Elections, PAM IORIO, Form DS-DE9A, *Appointment of Campaign Treasurer and Designation of Campaign Depository* and the *Statement of Candidate* Form with the Supervisor, as qualifying officer for candidates seeking to run for District 6 of the Tampa City Council. These acts were undertaken in compliance with the "City of Tampa Municipal Election 1995" instruction sheet provided by the Supervisor of Elections' Office; a copy of which was attached to the Complaint. The instruction sheet identifies that it was revised on January 6, 1995.

As indicated, REDNER announced that he intended to be a candidate for Tampa City Council, District 6, and in pursuance of said candidacy, REDNER made a public announcement thereof, appointed a campaign treasurer, and opened a depository account to receive campaign contributions, all as required by law. Following the announcement of candidacy for the District 6 position on the Tampa City Council, REDNER was informed and, in public statements made by the Supervisor of Elections, PAM IORIO, it was stated that, since REDNER had not registered to vote for at least a year prior to taking office in April, 1995, he would not be eligible to be a candidate for the Tampa City Council. This position was reflected by the "City of Tampa Municipal Election 1995" instruction form which states:

"Qualifications:...

"City Council Single Member Districts 4, 5, 6, and

7: Registered voter and a resident of the City of Tampa for one year, and of the district for six months immediately preceding the commencement of the term of office (April 1, 1995)."

In determining that REDNER could not be a candidate for the District 6 position on the Tampa City Council, the Supervisor of Elections PAM IORIO apparently relied on an interpretation (though somewhat ambiguous) of Tampa City Charter Section 2.02, ("**Qualifications--Limitation on Terms.**") Section 2.02 as reflected in the City Charter, as contained in Ordinance 8148-A, providing for a referendum and subsequently passed by the voters. Article II, Section 2.02, states:

"Each member of the city council shall have been a resident and elector of the city for one year immediately preceding the commencement of the term of office for which elected and shall continue to be a resident and elector of the city during the term of office. Additionally, the members of the city council representing districts 4 through 7 shall have been residents of the respective districts from which elected for six months immediately preceding the commencement of the term of office, and each shall continue to be a resident of the district from which elected during the term of office. No person who has, or but for resignation would have, served as a member of the city council for two consecutive, full terms shall be elected as a council member for the succeeding term; except that a person who has represented districts 1, 2, or 3 may run as a candidate for city council in district 4, 5, 6, or 7 if he meets the residency qualifications, and may, if elected, assume a seat on the city council immediately following his two

> consecutive, full terms; and except that a person who has served as a city council member representing either district 4, 5, 6, or 7 may run as a candidate to represent district 1, 2, or 3 and may, if elected, assume a seat on city council immediately following his two consecutive, full terms representing district 4, 5, 6 or 7. (Ord. No. 8148-A, §2, 1-6-8.3)"

The Supervisor of Elections, had interpreted Section 2.02 to require that REDNER, in order to be a candidate for the District 6 position on the Tampa City Council, not only had to meet a minimum durational residency requirement of one year prior to being elected, but also had to have been an "elector" of the CITY for one year, interpreted as being a registered voter, despite the ambiguity in the "City of Tampa Municipal Election 1995" instruction sheet.

On January 17, 1995, REDNER attempted to tender the additional financial disclosure and other documents to IORIO, who informed REDNER that, because of his failure to meet the requirement of the one year status as an "elector," REDNER would not be placed on the ballot. Based on the refusal to allow him on the ballot, REDNER filed an action for Declaratory Judgment and Injunctive Relief pursuant to Florida Statutes, Section 86.011, Article V, Sections 5 (b) and 23 of the Florida Constitution, and Rule 1.610, Fla.R.Civ.Pro., Chapter 26.012(3), Florida Statutes, which authorizes the circuit court to enter injunctions, and the inherent power of Florida courts to grant injunctive relief. The jurisdiction of the trial court was also invoked pursuant to 42 U.S.C. §§ 1983, 1985, and 1988. It was also alleged that this was a cause of action also arising under Article I, § 10 of the Constitution of the United States, and Under the Fourteenth Amendment to the Constitution. Essentially, REDNER sued the Supervisor of Elections for using the CITY OF TAMPA Charter provision, which required him to have been a

registered voter for one year prior to taking office, as an unconstitutional deprivation of his right to be a candidate for the Tampa City Council.

REDNER asserted that the determination and interpretation of Section 2.02 violated his rights to be a candidate for public office under the United States Constitution, which at Section 1, Amendment XIV, provides that:

> "No state shall deprive any person of liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

and further violated his rights to be a candidate for public office under the Constitution of Florida which provides at Section 2, Article 1 that:

> "All natural persons are equal before the law."

REDNER identified in the case before the lower court the constitutional deprivations that he would suffer as the result of the Supervisor of Elections' failure to place him on the ballot because, pursuant to the "City of Tampa Municipal Election 1995" instruction sheet, the qualifying period was identified from Noon, January 16, 1995 through Noon, January 20, 1995, and that if REDNER was not included as a candidate for District 6 of the Tampa City Council, the "Plaintiff will suffer irreparable injury through the deprivation of his rights under the Constitution of the United States and the Constitution of the State of Florida to be a candidate for the Tampa City Council, by not being placed on the ballot during this limited qualifying period."

REDNER clearly identified that he had no adequate remedy at law and also stated that "The public interest would best be served by the granting of the injunctive relief, and, indeed, the public interest is deserved by permitting the enforcement of invalid legislation such as that at issue herein, which interferes

with the public's rights, and REDNER'S rights, under the Constitution of the United States, or the Florida Constitution."

After identifying the satisfaction of all conditions precedent for the maintenance of the suit, and showing that all actions of Defendants, THE CITY OF TAMPA and PAM IORIO were taken "under color of state law," REDNER ultimately alleged that The City Charter Section at issue violated the rights guaranteed REDNER by the Florida and United States Constitution in that it:

a) Denied REDNER equal protection of the law.

b) Resulted in an unlawful exercise of the state's police power in that there was no substantial relationship to the protection of the public health and welfare or any legitimate governmental objective for said provision.

On January 20, 1995, approximately two hours prior to the closing of the qualifying period for REDNER'S inclusion on the ballot as a candidate for the Tampa City Council, the trial court denied injunctive relief.

After the Interlocutory Appeal described above, the case returned to the trial court and, as previously stated, without hearing any evidence or testimony as to the reasonability of the additional one year "elector" requirement, the trial court granted the City's Motion to Dismiss. The second appeal was also affirmed.

PROCEEDINGS BELOW

Redner brought the underlying action under 42 U.S.C. § 1983, *et.seq.*, in state court, seeking preliminary and permanent relief in the form of a Declaratory Judgment and injunctive relief, the result of which would have been to require the Supervisor of Elections to place Redner as a candidate for the Tampa City Council and invalidate the "elector" requirement as a prerequisite for candidacy. The Appellate Court affirmed the lower state court. On remand, the lower state court dismissed the

action and a subsequent appeal was taken. The dismissal was affirmed by the Appellate Court. The state court had jurisdiction of this matter pursuant to the ruling of this Court in *Howlett v. Rose*, 496 U.S. 356 (1990).

REASONS WHY CERTIORARI SHOULD BE GRANTED

In addition to the obvious desirability of correcting the error below, there is a compelling reason why certiorari should be granted in this case.

The vital importance of maintaining the ability to run for public office is one of the earmarks of a successful free society.

Accordingly, the Constitutionally mandated accessibility to run for public office has become of paramount importance in local government law, and a decision from this Court with respect to maintaining the sanctity of, and, more critically, accessibility to the electoral process will be of benefit to local governments and individuals desirous of running for public office throughout the country.

The critical point in this case is whether the previous courts erred by precluding any evaluation of the reasonability of the one year "elector" requirement. The first appeal questioned whether the trial judge abused his *discretion* by failing to grant REDNER'S Motion For A Temporary Injunction, with the weight of the evidence clearly being in favor of REDNER. The second appeal focused on the fact that, because of the different burden used to evaluate this matter, the trail court committed error by not requiring an evidentiary hearing on the "reasonableness" of the one year "elector" requirement.

During the hearing on REDNER'S motion for injunction, and throughout the pleadings in the case before the trial court, it was clearly shown that recent authority had established distinct criteria that any restriction placed on being a candidate for public

office. The lower courts ignored this criteria, as well as the fact that the CITY could make no showing that the restriction of being an "elector" had any rational relationship to a legitimate governmental purpose at all, or that, if it did, it was necessary beyond the additional requirement that a candidate also be a "resident" for the same one year durational requirement period.

In addition to this, the lower courts erred by failing to require an evidentiary hearing to properly evaluate, in light of the cited authority, the validity of the challenged candidacy requirement and the fundamental legal doctrine requiring that any obstacles officially placed before those desiring to qualify as a candidate for public office, **must,** at the very least, bear a rational relationship to a legitimate governmental purpose.

The authority provided by REDNER clearly showed that specific tests regarding candidacy requirements had been developed and that, even in light of authority which evaluated the one year "elector" requirement as the *only* requirement, and not as an *additional* requirement, there was no legitimate purpose for the one year "elector" restriction, regardless of authority to the contrary that totally neglected any such evaluation. REDNER, at the very least, should have been provided an evidentiary hearing to "test" whether or not the one year elector requirement actually bore a reasonable relationship to a legitimate governmental purpose *over and above* the one year residency requirement. It is REDNER'S position that the City can make no such showing, that this additional burden violates REDNER'S rights to equal protection of the law, and that the authority cited by the City to establish that a one year elector requirement was reasonable is inapplicable to the case at bar because the reasonability of the requirement was evaluated as the only prerequisite to candidacy rather than an evaluation of the same characteristic being *one* of *two* completely distinct requirements to qualify as a candidate for the City of Tampa City Council. REDNER would submit that this additional "elector" requirement bears no rational relationship to any legitimate governmental purpose that is not already satisfied

by the one year "resident" requirement. Ultimately, the decision of the lower courts is directly in conflict with this Court's many decisions emphasizing open access to candidacy for public office.

Point One
REDNER'S CONSTITUTIONAL RIGHTS WERE DEPRIVED BY THE LOWER COURTS' FAILURE TO EVALUATE THE REASONABLENESS OF THE ELECTOR REQUIREMENT IN LIGHT OF THE CONSTITUTIONAL CHALLENGES RAISED BY REDNER

Throughout the administration of the instant action, it has been stressed that the ability to run for public office is inextricably intertwined with the right to vote and is clearly a constitutional right, the deprivation of which, for even a minimal period of time, results in irreparable harm. As a corollary to the irreparable harm doctrine, an analysis of the nature of the "right" at issue also triggers the level of analysis necessary to evaluate the validity of the restriction. Indeed, if it was the only prerequisite, REDNER might well have acknowledged the "reasonableness" of the additional "elector" requirement, however, since it is one of two separate and distinct requirements, the question should be whether it provides any additional basis for which to predicate a persons ability to become a candidate for public office, or whether it is merely redundant, arbitrary, and superfluous.

The main issue goes to the reasonableness of the City's *additional requirement* that an individual had to be not only a "resident," but an "elector" also. This additional "requirement" serves no valid purpose, and, since a "resident" is clearly presumed to be familiar with relevant political and community issues, the additional requirement of being an "elector" serves as nothing more than an obstacle.

In *Bullock v. Carter*, 405 U.S. 134, 92 L. Ed. 2d 92, 92 S. Ct. 849 (1972), the Court considered the validity of a Texas law

imposing filing fees as a prerequisite to participation in primary elections. The Court found that the filing fee scheme had a real and substantial impact on the right to vote, and, as such, the law had to be closely scrutinized. *Id.* In the instant case, in light of the fact that running for office and voting are equally precious constitutional rights, the City's additional requirements for qualification must also be closely scrutinized.

The California Supreme Court in *Thompson v. Mellon*, 507 P.2d 628 (Cal S.Ct. 1973), regarding a similar restriction, a durational residence requirement, noted:

> "The overwhelming weight of recent authority, both before and after *Bullock* has held that durational residence requirements as a pre-condition to candidacy for public office have such a substantial impact on the right to vote as to invoke the strict scrutiny test." (*Id.* at 631).

The court in *Thompson* went on to declare that the "strict scrutiny" standard was the appropriate standard of review for durational residency requirements of candidates. These cases clearly show that by evaluating the level of scrutiny, it is clear that a fundamental and/or Constitutional right was involved. With that being the case, any deprivation would be presumed to be irreparable harm. REDNER met this test, and, at the very least, had a right to an evidentiary hearing to challenge the "reasonableness" of the additional elector requirement.

The right to hold public office, either by election or appointment is one of the valuable rights of citizenship. *Treiman v. Malmquist*, 342 So.2d 972 (Fla 1977); *Zeilenga v. Nelson*, 484 P. 2d 578 (Cal. 1971). There is a federal constitutional right to be considered for public service without burden of invidiously discriminatory disqualification. *Turner v. Fouche*, 396 U.S. 346; 24 L.Ed. 2d 567, 90 S.Ct. 532 (1970).

In the instant case, it is clear that the failure to include

REDNER on the ballot clearly resulted in irreparable harm. In *Sadowski v. Shevin,* 345 So. 2d 330 (Fla. 1977), the Florida Supreme Court discussed a case where the District Court of Appeal opined that, in a similar challenge to election restrictions, if the underlying legislation was unconstitutional, then injunctive relief should have been granted (the Court ultimately invalidated restrictions on campaign expenditures and advertising). Clearly, other courts have understood that the failure to include candidates on a ballot, in conjunction with the fact that said activity is a protected right, and that limited qualifying periods, campaign periods and elections all point to the emergency nature incumbent in those scenarios, and appropriateness of injunctive relief, in facts almost identical to the instant action. See also *Hyde v. City of Dania,* 579 So. 2d 894 (Fla. 4 DCA 1991). In the instant case, assuming that injunctive relief was not obtained, it would still have been appropriate for the trial court to evaluate the "reasonableness" of the additional restriction. The importance of the issue as established in these cases clearly show that the Motion to Dismiss was granted in error.

Point Two

THE CITY OF TAMPA CHARTER PROVISION DENIES EQUAL PROTECTION OF THE LAW TO THOSE SEEKING PUBLIC OFFICE.

As pointed out to the lower courts, the subject of this action was a challenge to the one year requirement of being an "elector" or registered voter in the Tampa City Charter, Section 2.02, (Qualifications--Limitations on Terms"). In the hearing for Temporary Injunction, it was argued (and also seemingly understood by the judge) that this requirement penalizes those otherwise qualified persons who, because of age, illness, residence or, as in the instant case, because civil rights had been restored during the qualifying period, failed or were unable to register to vote in a time period somewhere in the past, and thus

discriminates against these persons by denying them the opportunity to run for certain public offices. Such laws divide residents into two classes, old registered voters, and new registered voters. The constitutional question presented was whether the Equal Protection Clauses of the United States and Florida Constitutions permit a city to discriminate in this way amongst its citizens.

To decide whether a law violates the Equal Protection Clause, we look, in essence, to three things: the character of the classification in question, the individual interests affected by the classification, and the governmental interests asserted in support of the classification. cf. *Williams v. Rhodes*, 393 U.S. 23, 30, 21 L. Ed. 2d 24, 31, 89 S.Ct. 5 (1968). In considering laws challenged under the Equal Protection Clause, the Court has evolved more than one test, depending upon the interest affected or the classification involved. *Dunn v. Blumstein*, 405 U.S. 330, 31, L.Ed. 274, 92 S.Ct. 995 (1972).

First, as explained to the lower court, it is necessary to determine what standard of review is appropriate. To do so, it is necessary to look to the benefit withheld from the class and the basis of the classification. Here the benefit withheld is the right to run for the public office of District 6 of the Tampa City Council, and the basis for the classification is that REDNER had not been a registered voter for one year.

Given the facts of this case and the fundamental nature of the rights affected by the one year requirements of being an "elector," it was necessary that the CITY OF TAMPA show compelling reasons for the imposition of the requirement that a candidate for Tampa City Council be a registered voter for one year. At no point in any of the pleadings or in any of the arguments made by the CITY was any reason shown why the "elector" requirement was in any way necessary, or that it was necessary as an additional restriction beyond the "residency requirement." The Motion to Dismiss should never have been granted prior to an evidentiary hearing on this issue.

It was argued to the court that *Treiman v. Malmquist*, 342 So.2d 972 (Fla. 1977) was critical to a coherent consideration of the instant case. Malmquist qualified to run for office on July 12, 1976. The last general election had been held November 5, 1974, and Malmquist had not registered to vote in Florida until November 14, 1974. That court held this requirement to be void, and stated:

> "Rather, we find the statute unconstitutional for the reason that it is an arbitrary and unreasonable restraint on the election process in this state. Although the legislature is charged with the authority and responsibility of regulating the election process so as to protect the political rights of the people and the integrity of the political process, these regulations must be reasonable and necessary restraints on the elective process and not inconsistent with the constitution of this state.
>
> " . . .
>
> "The right of the people to select their own officers is their sovereign right, and the rule is against imposing unnecessary and unreasonable qualifications to run.
>
> " . . .
>
> "Fundamental to our system of government is the principal that the right to be a candidate for public office is a valuable one and no one should be denied this right unless the Constitution or an applicable valid law expressly declares him to be ineligible.

" . . .

> "We find that Section 105.031(4)(a) does not serve any reasonable or legitimate state interest. It does not in any way protect the integrity of the election process or purity of the ballot; it does not serve to keep the ballot within manageable limits . . . nor does it serve to assure orderly and effective elections; it does not serve to maintain party loyalty and perpetuate the party system. The barrier it erects is an unnecessary restraint on one's right to seek elective office."

Treiman likewise controls the case here. There is no rational basis that there be a one year voter registration requirement, immediately prior to qualification, shown by the Defendants/Appellees particularly when it is an additional burden beyond the one year residency requirement. The CITY cannot meet its burden under either the test set forth in *Treiman,* or the tests enumerated below, because it cannot be shown that there is any compelling state interest, or more so that this interest is not met by the concomitant one year residency requirement.

Also important was the Florida appellate decision of *Board of County Commissioners of Sarasota County v. Gustafson,* 616 So. 2d 1165 (Fla. 2 DCA 1993). Again, it was discussed what level of scrutiny was necessary to evaluate the challenged residency requirement in that case. The criteria set forth included "to protect the integrity of the political process," to ensure free and fair elections, to protect the purity of the ballot, to keep the ballot within manageable limits, to assure orderly and effective elections, or to maintain party loyalty or perpetuate the party system. During the hearing of January 19, 1995, it seemed clear that the judge was aware of these requirements and clearly recognized the absence of any evidence, whatsoever, to show the City Charter restriction of being an "elector" as being related to any stated goal. In fact, it

was in its exchange between the counsel for the CITY and the trial court that it becomes clear that the "goals" of the Charter provisions could be met singularly by the residency requirement since "the same criteria can be equally applied to the elector provision that there is no reason to suggest that there have to be independent criteria, the same criteria, would have equal application." Under *Gustafson,* the court focused on an evaluation of whether the residency restriction in that case was based on reasonable and legitimate governmental interests and *also* on showing the inadequacy of alternative and less restrictive methods of achieving its goal.

Under the analysis set forth in *Gustafson,* and the clear showing that the trial court completely overlooked the fact that *no evidence* whatsoever was submitted by the CITY OF TAMPA to satisfy any reason, much less a compelling reason, that the "elector" restriction was related to any state interest, it is clear that the trial court abused its discretion in denying the injunctive relief sought. In its order, the trial court based its finding on the case of *Nichols v. State,* 177 So. 2d 467 (Fla. 1965), finding it directly on point and holding that a one year elector requirement was not unreasonable. Reliance on the *Nichols* case was clearly in error and an abuse of discretion on the part of the trial court. Regardless of the ruling on injunctive relief, it is clear that to deprive REDNER a chance to challenge the reasonableness of the "elector" requirement by the granting of the Motion to Dismiss is **reversible** error. Nowhere did *Nichols* discuss the criteria to be evaluated in determining whether qualifications for municipal office were reasonable or unreasonable. Indeed, any evaluation of the facts other than a simple jurisdictional basis for the restriction therein, is entirely absent in the *Nichols* case.

While there was a clear distinction in the instant case between challenging a residency requirement, which was stipulated to as being reasonable, the question of "reasonability" was foremost. Indeed, several courts have even invalidated such residency requirements. In *Dunn v. Blumstein*, 405 U.S. 330, 31

L.Ed. 2d 274 (1971), this Court also held a durational residency requirement invalid. In *Zeilenga*, the California Supreme Court noted in dicta regarding the durational residency requirement, which is a similar restriction (and perhaps even more understandable that the "elector" requirement), that:

> "It excludes certain citizens from public office by a classification which is unnecessary to promote a compelling governmental interest. It is a built-in device to prevent competition against the county's old timers for the office of supervisor. Nowhere is it shown that a candidate for the office of supervisor cannot acquire competent knowledge of the county's conditions in much less than five years to qualify him for the office, at least sufficiently to submit to the voters for their choice his knowledge thereof."

As stated, the Florida Supreme Court in *Treiman v. Malmquist*, 342 So.2d 972 (Fla. 1977) considered a statute requiring that a candidate for judicial office to have been registered to vote in the last preceding general election, a situation almost identical to the instant case. The court did not expressly visit the issue of durational residence, although the registration to vote requirement is tantamount to a durational residence requirement because it requires that the would-be candidate be a resident two (2) years earlier. In that case, the court said of the restriction:

> "It effectively forecloses the candidacy of all of those otherwise qualified persons who, because of age, illness, residence or other reason, failed or were unable to register to vote in a time period somewhere in the past.

> "We find that [the statute] does not serve any reasonable or legitimate state interest. It does not in any way protect the integrity of the election process or purity of the ballot; it does not serve to keep the ballot within manageable limits, cf. *Lubin v. Parrish*, 415 U.S. 709, 94 S. Ct. 1315, 39 L.Ed. 2d 702 (1974), *Bullock v. Carter*, 405 U.S. 134, 92 S. Ct. 849, 31 L. Ed. 2d (1972), *Pasco v. Heggen*, supra; nor does it serve to assure orderly and effective elections; it does not serve to maintain party loyalty and perpetuate the party system, cf. *Crowells v. Petersen*, 118 So. 2d 539 (Fla. 1960). The barrier it erects is an unnecessary restraint on one's right to seek elective office."

The failure of prior courts' to recognize the deprivation of federal rights inherent in the denial of access to the ballot for REDNER emphasizes the need for this Court to act.

POINT THREE
THE ONE YEAR REQUIREMENT OF BEING AN "ELECTOR" IS AN ARBITRARY AND UNREASONABLE RESTRAINT ON THE ELECTION PROCESS AND IS THEREFORE UNCONSTITUTIONAL

In *Treiman v. Malmquist*, 342 So. 2d 972 (Fla. 1977), the Florida Supreme Court held unconstitutional a statute that required a candidate for judicial office to have been registered to vote in the last general election. In so doing, the court stated:

> "The right of the people to select their own officers is their sovereign right, and the rule is against imposing unnecessary and unreasonable qualifications to run. cf. *Ervin v. Collins*, 85 So. 2d 852 (Fla. 1956). (*Id.* at 975.)"

This Court has also recognized identical rights. The one year requirement of being an elector in Tampa City Charter, Section 2.02, should be found unconstitutional as an unreasonable and unnecessary disqualifying factor. As another fact, it is unfortunate that both the trial court and the CITY totally misunderstood the nature of the injunctive relief sought by REDNER. It was not a mandatory injunction seeking to have REDNER placed on the ballot. It was merely seeking an injunction to restrain the Supervisor of Elections from using the unconstitutional one year "elector" restriction as the basis to deny access to the ballot. Indeed, this is clearly supported by the prayer for relief in the Complaint and in the Motion for Temporary Injunction.

In conclusion, the one year registration to vote requirement found in Section 2.02 of the Tampa City Charter is an unconstitutional and impermissible restriction on the inextricably intertwined rights to vote and run for public office. For this reason, it was stressed to the lower courts that should find Section 2.02 of the Tampa City Charter unconstitutional as it pertains to the "elector" requirements. REDNER does not challenge legitimate requirements for candidates for public office. What he does challenge, however, is the reasonability of the additional "elector" restriction over and above the one year residency requirement, because such additional restriction serves absolutely no legitimate purpose that cannot be served by the residency requirement.

CONCLUSION

The petition for a writ of certiorari should be granted.

September 22, 1997

Respectfully Submitted,

Luke Charles Lirot
Counsel of Record
112 East Street
Suite B
Tampa, FL 33602
(813) 221-9533
(813) 221-9175 FAX
Counsel for Petitioner

No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

JOSEPH RICHARD REDNER,

Petitioner,

v.

THE CITY OF TAMPA, FLORIDA, a Florida Municipal Corporation, and PAM IORIO, in her official capacity as Supervisor of Elections, Hillsborough County, Florida

Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Second District

APPENDICES

Luke Charles Lirot
Luke Charles Lirot, P.A.
112 East Street, Suite B
Tampa, FL 33602
(813) 221-9533
(813) 221-9175 FAX

LIST OF APPENDICES

APPENDIX "A"	Order denying Motion for Temporary Injunction, Case No.: 95-0314, January 20,1995.
APPENDIX "B"	Florida 2d District Court of Appeal Affirmance, Case 95-00230, May 12, 1995.
APPENDIX "C"	Florida 2d District Court of Appeal Denial of Rehearing, Case 95-00230, May 27, 1995.
APPENDIX "D"	Order Granting Motion to Dismiss, Case No.: 95-0314, January 20,1995.
APPENDIX "E"	Florida 2d District Court of Appeal Affirmance, Case 96-02151, May 9, 1997.
APPENDIX "F"	Florida 2d District Court of Appeal Denial of Rehearing, Case 96-02151, June 24, 1997.
APPENDIX "G"	Executive Order Granting Clemency, December 14, 1994.

APPENDIX A

IN THE CIRCUIT COURT OF THE THIRTEENTH
JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR
HILLSBOROUGH COUNTY
CIVIL DIVISION

JOSEPH RICHARD REDNER,

Plaintiff, CASE NO.: 95-0314
DIVISION: J

vs.

THE CITY OF TAMPA, FLORIDA
AND PAM IORIO,

Defendants.
_____/

ORDER OF COURT

Upon consideration of Plaintiff's Motion for Temporary Injunction, and Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Temporary Injunction and accompanying Affidavit of Defendant Pam Iorio in Opposition to Plaintiff's Motion for Temporary Injunction, and after having heard oral argument thereon on January 19, 1995, and otherwise being duly advised in the premises,

It is hereby Ordered and Decreed that Plaintiff's Motion for Temporary Injunction is denied for the reasons that:

(1) Plaintiff has failed to establish irreparable harm;

(2) Plaintiff has failed to establish a clear legal right to the

relief requested, i.e. Plaintiff has failed to establish a substantial likelihood that Plaintiff will ultimately prevail on the merits;

(3) Plaintiff has failed to establish that the public interest will be served by granting the temporary injunction; to the contrary, the public interest will be disserved by granting a temporary injunction.

The Court further finds that the case of Nichols v. State, 177 So.2d 467 (Fla. 1965) is directly on point and expressly holds that a one year elector requirement is not unreasonable.

The Court further incorporates by reference the findings of the Court which were announced from the bench on January 19, 1995 and which are reflected in the notes of testimony which are attached hereto and incorporated by reference.

DONE AND ORDERED in Chambers this 20th day of January, 1995.

/S/

Edward H. Ward
Circuit Court Judge

Copies to:

Jerry M. Gewirtz, Esq.
Luke Lirot, Esq.
Robert Warchola, Esq.

APPENDIX B

NOT FINAL UNTIL TIME EXPIRES TO FILE
REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOSEPH RICHARD REDNER,)
)
Appellant ,)
)
v.)
CASE NO. 96-02151
)
THE CITY OF TAMPA, FLORIDA, a)
Florida Municipal Corporation, and PAM)
IORIO, in her official capacity as)
Supervisor of Elections,)
)
Appellees .)
)

Opinion filed May 12, 1997.

Appeal from nonfinal order of the
Circuit Court for Hillsborough County
Edward H. Ward, Judge.

Luke Charles Lirot, Clearwater
for Appellant.

Jerry M. Gewirtz, Assistant City Attorney, Tampa, for Appellees.

PER CURIAM.

Affirmed.

CAMPBELL, A.C.J., and FULMER and WHATLEY, JJ., Concur.

APPENDIX C

NOT FINAL UNTIL TIME EXPIRES TO FILE
REHEARING
MOTION AND, IF FILED, DETERMINED.
MAY 27, 1995

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOSEPH RICHARD REDNER,

Appellant(s),

v.

Case No. 95-00230

THE CITY OF TAMPA, FLORIDA, a
Florida Municipal Corporation,
and PAM IORIO, in her official
capacity as Supervisor of Elections,
Appellees .

BY ORDER OF THE COURT:

Counsel for appellant having filed a motion for rehearing and motion for rehearing en banc in the above-styled case, upon consideration, it is

ORDERED that the motions are hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A TRUE COPY OF THE ORIGINAL COURT ORDER.

WILLIAM A. HADDAD, CLERK

c. Luke Charles Lirot, Esq.
James D. Palmero, Esq.
Jerry Gerwitz, Esq.

APPENDIX D

IN THE CIRCUIT COURT OF THE THIRTEENTH
JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA, IN AND FOR
HILLSBOROUGH COUNTY
CIVIL DIVISION

JOSEPH RICHARD REDNER,

Plaintiff, CASE NO.: 95-0314
DIVISION: C

vs.

THE CITY OF TAMPA, FLORIDA
AND PAM IORIO,

Defendants.
_____/

ORDER ON CITY'S AMENDED MOTION TO DISMISS COMPLAINT

THIS CAUSE came on to be heard on May 2, 1996 on the Amended Motion of the City of Tampa to Dismiss Plaintiff's Complaint, and there being present counsel for all the parties, the Court hearing argument of counsel, and being otherwise duly advised in the premises, it is hereby:

ORDERED AND ADJUDGED that the City's Amended Motion to Dismiss Complaint is granted and that the Complaint is hereby dismissed with prejudice.

DONE AND ORDERED in Chambers this 13th day of May, 1996.

/S/

Sam D. Pendino
Circuit Court Judge

Copies to:
Jerry M. Gewirtz, Esq.
Luke Lirot, Esq.

APPENDIX E
NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA SECOND DISTRICT

JOSEPH RICHARD REDNER,
Appellant,

v.

CASE NO. 96-02151

THE CITY OF TAMPA, FLORIDA, a Florida Municipal Corporation, and PAM IORIO, in her official capacity as Supervisor of Elections,

Appellees.

Opinion filed May 9, 1997.

Appeal from the Circuit Court for Hillsborough County; Sam D. Pendino, Judge.

Luke Charles Lirot, Tampa, for Appellant.

James D. Palermo, City Attorney, and Jerry M. Gewirtz, Assistant City Attorney, Tampa, for Appellees.

PER CURIAM.

Affirmed. See Nichols v. State, 177 So.2d 467 (Fla. 1965).

PARKER, A.C.J., and ALTENBERND and BLUE, JJ., Concur.

APPENDIX F

IN THE SECOND DISTRICT COURT OF APPEAL,
LAKELAND, FLORIDA

JUNE 24, 1997

JOSEPH RICHARD REDNER,
Appellant(s),

v. Case No. 96-02151

THE CITY OF TAMPA,
FLORIDA, etc., et al,

Appellee(s).

BY ORDER OF THE COURT:

Counsel for appellant having filed a motion for rehearing and motion for rehearing en banc in the above-styled case, upon consideration, it is

ORDERED that the motions are hereby denied.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.
WILLIAM A. HADDAD, CLERK

c: Luke Charles Lirot, Esq.
James D. Palmero, Esq.
Jerry Gerwitz, Esq.

APPENDIX G

State of Florida

RECEIVED
DEPARTMENT OF STATE
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DIVISION OF ELECTIONS
TALLAHASSEE, FL

Whereas, At a meeting this day, at which were present

His Excellency, LAWTON CHILES

Governor of said State, JIM SMITH, Secretary

of State, ROBERT A. BUTTERWORTH, Attorney General,

GERALD LEWIS, Comptroller,

TOM GALLAGHER, Treasurer, DOUG JAMERSON, Commissioner

of Education, and BOB CRAWFORD, Commissioner of Agriculture,

of said State, who under the Constitution of said State, have full power to grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses, it was determined that JOSEPH RICHARD REDNER

who was convicted in the Circuit Court, Hillsborough County, Florida, of the offenses of Possession of Cocaine (Count I) and Possession of Controlled Substance - Paraphernalia (Count II), and on March 2, 1984, placed on probation for 5 years, on each count, to run concurrent, should now, upon showing made, be granted restoration of civil rights without the right to own, possess or use firearms.

Wherefore, Be It Resolved, That the said JOSEPH RICHARD REDNER is hereby granted restoration of civil rights without the right to own, possess or use firearms.

In Testimony Whereof, We have hereunto set our hands,

this 14th day of December, A.D. 19 94

I certify the foregoing to be a true and correct copy of the original order.
Custodian, Office of Executive Clemency

Secretary of State.

Attorney General.

Comptroller.

Treasurer.

Commissioner of Education.

Commissioner of Agriculture.

BEST AVAILABLE COPY

(2)

Supreme Court, U.S.
FILED
OCT 28 1997
CLERK

No. 97-608

In The

Supreme Court of the United States

October Term, 1997

JOSEPH RICHARD REDNER,

Petitioner,

vs.

THE CITY OF TAMPA, FLORIDA, a Florida Municipal Corporation, and PAM IORIO, in her official capacity as Supervisor of Elections, Hillsborough County, Florida,

Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal of Florida, Second District

RESPONDENTS' BRIEF IN OPPOSITION

JERRY M. GEWIRTZ
Assistant City Attorney
Attorney for Respondents
315 East Kennedy Boulevard
Fifth Floor, City Hall
Tampa, Florida 33602
(813) 274-8996

72288 (800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21 Lutz Appellate Services, inc.

1408

QUESTIONS PRESENTED

Respondents, City of Tampa, Florida and Pam Iorio, in her official capacity as Supervisor of Elections, Hillsborough County, Florida, respectfully restate the questions presented as follows:

I. WHETHER THE IMPOSITION OF A ONE-YEAR ELECTOR REQUIREMENT IS CONSTITUTIONAL.

II. WHETHER UNDER THE FACTS OF THIS CASE THERE WAS A NEED FOR AN EVIDENTIARY HEARING.

PARTIES TO THE PROCEEDINGS BELOW

Plaintiff: Joseph Richard Redner.

Defendants: City of Tampa, Florida and Pam Iorio, in her official capacity as Supervisor of Elections, Hillsborough County, Florida.

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(Fla. 1977) 2,5,6,7

OTHER AUTHORITIES CITED:

Tampa Home Rule Charter §2.02 1,4,7

STATEMENT OF THE CASE

The within action revolves around the constitutionality of the one year elector requirement imposed under §2.02 of the Tampa City Charter.

On January 17, 1995, Petitioner filed a Complaint challenging the constitutionality of the one-year elector requirement imposed under §2.02 of the Tampa City Charter. On January 19, 1995, a hearing was held before the Honorable Edward Ward on Petitioner's Motion for Temporary Injunction wherein the issue of the constitutionality of the one-year elector requirement was addressed at length. On January 20, 1995, Judge Ward issued a written Order wherein he denied the Petitioner's Motion for Temporary Injunction and held that, under the authority of Nichols v. State, 177 So.2d 467 (Fla. 1965), a one-year elector requirement is not unreasonable. (Petitioner's Appendix "A", page 41.) The court also incorporated into its Order, by reference, the findings of the court which were announced from the bench on January 19, 1995. The findings, which were announced from the bench, were as follows:

> The Court does find and it certainly is not disputed that the Plaintiff-Petitioner, Mr. Redner, is not or could not satisfy the City Charter requirement Section 2.02 that each member of City Council shall have been a resident and elector of the City for one year immediately preceding the commencement of the term of office for which elected.
>
> The Court finds that the Plaintiff has not demonstrated irreparable harm. While

it may be true that Mr. Redner is or may be thwarted in his immediate bid for public office, his position -- if I might borrow now from some medical vernacular -- can be likened into that of a temporary infirmity or acute inadequacy, as opposed to a chronic or terminal condition or insufficiency.

The Court further finds that the Plaintiff has not established a clear, legal right to the relief requested in that there has not been a demonstration of a substantial likelihood that the movant would be or is entitled to relief on the merits.

At this point the Court would cite for the record the only case on point which was the Nichols case at 177 So.2d 467 in which the Supreme Court articulated that a one-year elector requirement was not unreasonable.

In passing, the Court would note that the case of Treiman, T-R-E-I-M-A-N, although intriguing and interesting, certainly was ably distinguished on the facts from the case at bar.

The Court further finds that the public interest at this time would not be served by granting the injunction. Indeed the Petitioner does not seek to preserve the status quo, but urges this Court to order affirmative action by the Defendant-Supervisor, which could conceivably lead to havoc and chaos and serve to disrupt the orderly election process.

The citizens of the City of Tampa have spoken by way of a municipal charter.

> And in that instrument, the voters have articulated and approved a twofold requirement for those persons who aspire to positions of leadership through public office.
>
> The Plaintiff, Mr. Redner, fully satisfies one of the conditions precedent, that is, the residency requirement.
>
> However, through and as a result of Mr. Redner's own past volitional acts, which at the time were adjudged illegal, does not at this time possess the second prerequisite for qualifying for public office, that is, the concomitant provision of a one-year status as an elector.
>
> Inasmuch as the people of Tampa have spoken and have firmly in place what this Court considers reasonable and legitimate qualifications and requirements for those persons seeking public office, it is the decision of this Court to deny the Plaintiff's Motion for Temporary Injunction.
>
> The Court reserves on issues of attorney's fees and costs.

Petitioner subsequently took an appeal from Judge Ward's Order and, on May 12, 1995, the Second District Court of Appeal issued a per curiam affirmance. (Petitioner's Appendix "B", page 44.) [1]

---

[1] The Petitioner's Appendix "B" erroneously reflects the date of this per curiam affirmance as May 12, 1997; in fact, the per curiam affirmance was issued on May 12, 1995.

On May 2, 1996, oral argument was held before the Honorable Sam Pendino on the Respondents' Amended Motion to Dismiss the underlying Complaint filed by Petitioner. At the oral argument, the parties once again addressed the constitutionality of §2.02 of the Tampa City Charter and, at said argument, Judge Pendino verbally ruled that he found the one-year elector requirement to be reasonable. On May 13, 1996, Judge Pendino issued a written Order granting the Respondents' Amended Motion to Dismiss the Complaint (Petitioner's Appendix "D", page 48) and, thereafter, Petitioner took another appeal to the Second District Court of Appeal. On appeal, the issue of the constitutionality of the one-year elector requirement was once again addressed at length and, on May 9, 1997, the Second District Court of Appeal issued a per curiam affirmance wherein the court cited to the dispositive case of Nichols, supra, in which the Florida Supreme Court held that a one year elector requirement is not unreasonable. (Petitioner's Appendix "E", page 50.)

REASONS FOR DENYING THE WRIT

The Respondents, City of Tampa, Florida and Pam Iorio, in her official capacity as Supervisor of Elections of Hillsborough County, Florida, respectfully request that this Court deny the Petition for Writ of Certiorari submitted by Petitioner, Joseph R. Redner, for the reasons set forth below.

POINT I: THE IMPOSITION OF A ONE YEAR ELECTOR REQUIREMENT IS NOT UNCONSTITUTIONAL.

In Nichols v. State, 177 So.2d 467 (Fla. 1965), a case directly on point, the Supreme Court of Florida expressly held that it was not unreasonable for a statute to require that the city commissioners shall have been electors for at least one year immediately preceding their qualifying for office. Id. at 469. Accordingly, the Florida Supreme Court upheld the decision of the chancellor which found the statute to be valid.

The Petitioner attempts to extricate himself from the holding in the Nichols case by principally relying upon two cases, to wit, Treiman v. Malmquist, 342 So.2d 972 (Fla. 1977) and Board of Commissioners of Sarasota v. Gustafson, 616 So.2d 1165 (Fla. 2d DCA 1993). Each of these cases, as discussed below, is clearly distinguishable from the matter at hand.

Treiman is distinguishable from the case sub judice in the following significant respects. First of all, in Treiman the statute at issue required that a candidate for judicial office have been registered to vote in the last preceding general election. Under the facts of Treiman, the candidate was required to have registered to vote more than 20 months before the candidate qualified to run for office. In the matter at hand, the duration for the elector requirement is only one year and, as the Supreme Court of Florida held in Nichols,

a one year duration for the elector requirement is reasonable.

Secondly, in Treiman the candidate at issue had in fact registered to vote approximately 20 months before he qualified to run for office. In the case sub judice, the Petitioner did not register to vote until only one month before the qualifying period expired.

Thirdly, Treiman does not overrule Nichols and, indeed, the two cases can be read in harmony with each other. Treiman does not state that a restraint on the elective process is prohibited; to the contrary, Treiman holds that reasonable controls may be imposed on the election process. 342 So.2d at 975. In Treiman, the court found that the requirement of being registered to vote 20 months in advance of the last preceding general election was unreasonable whereas in Nichols the court found that a one year elector requirement was reasonable. Accordingly, these two cases are not inconsistent.

Finally, Treiman is further distinguishable in that in Treiman the court stated that this "restriction applies solely to candidates for judicial office. No such similar restraint was placed on candidates for any other political office." 342 So.2d at 976. In the case at bar, the provision at issue is even handed and does not discriminatorily apply to only a single group of candidates.

The Gustafson case, upon which Petitioner heavily relies, is also distinguishable in a couple of significant respects. First and foremost, in Gustafson the provision at issue dealt with a two year durational residency requirement rather than the one year elector requirement which is at issue in the matter at hand. This is a critical difference. Secondly, in Gustafson, the court indicated that a durational requirement of less than two years would not necessarily be improper. Indeed, the court stated:

> It is the length of the durational residency requirement that determines which equal protection analysis will be applied. Accordingly, a fundamental right is not considered seriously infringed so as to require a strict scrutiny analysis unless the candidate durational residency requirement is deemed excessive. Treiman v. Malmquist, 342 So.2d 972 (Fla. 1977); Marina v. Leahy, 578 So.2d 382 (Fla. 3d DCA 1991); Daves v. City of Longwood, 423 F.Supp. 593 (M.D. Fla. 1976). Conversely, a candidate durational residency requirement that is deemed reasonable is not considered to seriously infringe using the traditional equal protection analysis.

616 So.2d at 1167.

POINT II: UNDER THE FACTS OF THIS CASE, THERE WAS NO NEED FOR AN EVIDENTIARY HEARING.

Contrary to Petitioner's argument, there was no need for an evidentiary hearing in this case for a few reasons.

First of all, there are no disputed facts. The Petitioner does not dispute that he failed to satisfy the one year elector requirement. The only issue which was the subject of the lower court action was the legal issue of whether the one year elector requirement, imposed under §2.02 of the Tampa Home Rule Charter, is constitutional.

Secondly, questions of pure law do not require an evidentiary hearing. The Florida Supreme Court has itself affirmed the granting of a motion to dismiss, without an evidentiary hearing, in adjudicating the merits of a constitutional issue where there was no disputed issues of fact. See City of Long Beach Resort v. Collins, 261 So.2d 498

(Fla. 1972).

Thirdly, and perhaps most significantly, there is no obligation on the part of the government to produce evidence to sustain the rationality of a statute or other legislative enactment. See Heller v. Doe, 309 U.S. 312, 113 S.Ct. 2637, 125 L.Ed. 2d 257 (1993); Federal Communications Commission v. Beach Communications, Inc., 508 U.S. 307, 113 S.Ct. 2096, 124 L.Ed. 2d 211 (1993); Panama City Medical Diagnostic Limited v. Williams, 13 F.3d 1541 (11th Cir.); Cafe 207, Inc. v. St. Johns County, 856 F.Supp. 641 (M.D. Fla. 1994).

CONCLUSION

For all the aforesaid reasons, it is respectfully requested that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

Dated:
October 23, 1997

Jerry M. Gewirtz
Assistant City Attorney
Florida Bar No. 843865
5th Floor, City Hall
315 E. Kennedy Blvd.
Tampa, Florida 33602
813/223-8996
Counsel for Respondents
The City of Tampa, Florida,
and Pam Iorio, in her
official capacity as
Supervisor of Elections
Hillsborough County, Florida

RednrSCt.Res